

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,
INC.

Plaintiffs and
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**ASSENTED TO MOTION TO IMPOUND MATERIALS CITED
IN EARTH PRODUCTS' MOTION TO AMEND AND
DESIGNATED AS CONFIDENTIAL BY PLAINTIFFS**

Pursuant to District of Massachusetts Local Rule 7.2 and Section 8 of the Stipulated Protective Order (Dkt. No. 30), Defendant Earth Products Inc. ("Earth Products") moves this Honorable Court for an Order impounding and sealing Defendant Earth Products Inc.'s Motion for Leave to File First Amended Answer, Affirmative Defenses and Counterclaims ("Motion to Amend") and Exhibits D and F-H to the Declaration of Derrick Toddy ("Toddy Decl.") accompanying that Motion. These materials are not voluminous, comprising a brief of 16 pages and 30 pages of exhibits together totaling approximately 46 pages.

This motion is necessitated by the fact that Plaintiffs designated interrogatory responses and deposition testimony quoted and/or discussed in Earth Products' Motion to Amend as confidential under the Stipulated Protective Order and, despite Earth Products' request, did not agree to de-designate such materials. Accordingly, Earth Products requests an order authorizing its Motion to Amend and Exhibits D and F-H to the associated Toddy Declaration to be filed under seal and impounded.

The Clerk should impound these materials as described in Section 8 of the Stipulated Protective Order (Dkt. No. 30), *i.e.*, until 30 days after the conclusion of this case in this District Court.

Pursuant to Section 8 of the Stipulated Protective Order, Plaintiffs Meynard Designs, Inc. and Earth, Inc. and Third-Party Defendant Planet, Inc. have assented to this motion.

Dated: October 12, 2007

By: /s/ Derrick W. Toddy
J. Christopher Carraway (*pro hac vice*)
Email: chris.carraway@klarquist.com
Cindy L. Caditz (*pro hac vice*)
Email: cindy.caditz@klarquist.com
Scott E. Davis (*pro hac vice*)
Email: scott.davis@klarquist.com
Derrick W. Toddy (*pro hac vice*)
Email: derrick.toddy@klarquist.com
KLARQUIST SPARKMAN, LLP
121 S.W. Salmon Street, Suite 1600
Portland, Oregon 97204
Phone: 503-595-5300
Fax: 503-595-5301

Steven M. Bauer, BBO# 542531
sbauer@proskauer.com
Kimberly A. Mottley, BBO# 651190
kmottley@proskauer.com
PROSKAUER ROSE LLP
One International Place
Boston, Massachusetts 02110
Phone: 617-646-8000
Fax: 617-646-8646

Attorneys for Earth Products Inc.

CERTIFICATE OF SERVICE

I certify that this ASSENTED TO MOTION TO IMPOUND MATERIALS CITED IN EARTH PRODUCTS' MOTION TO AMEND AND DESIGNATED AS CONFIDENTIAL BY PLAINTIFFS is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF).

Counsel for other parties are also being served by electronic mail on the date of electronic filing.

Dated: October 12, 2007

By: /s/ Derrick W. Toddy

J. Christopher Carraway (*pro hac vice*)

Email: chris.carraway@klarquist.com

Cindy L. Caditz (*pro hac vice*)

Email: cindy.caditz@klarquist.com

Scott E. Davis (*pro hac vice*)

Email: scott.davis@klarquist.com

Derrick W. Toddy (*pro hac vice*)

Email: derrick.toddy@klarquist.com

KLARQUIST SPARKMAN, LLP

121 S.W. Salmon Street, Suite 1600

Portland, Oregon 97204

Phone: 503-595-5300

Fax: 503-595-5301

Steven M. Bauer, BBO# 542531

sbauer@proskauer.com

Kimberly A. Mottley, BBO# 651190

kmottley@proskauer.com

PROSKAUER ROSE LLP

One International Place

Boston, Massachusetts 02110

Phone: 617-646-8000

Fax: 617-646-8646

Attorneys for Earth Products Inc.